IN THE UNITED STATES DISTRICT COURT

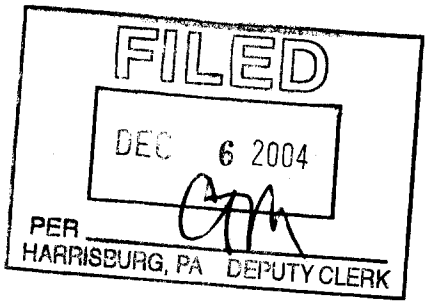
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

Edward R. Coss, JR., Petitioner
V.
JAMES P. MORGAN, Respondent

CIVIL ACTION NO 1:01-CV 00878

(Judge Caldwell)

(Magistrate Judge Blewitt)



Petitioners Response to Respondents motion to Dismiss, motion For Extension of Time AND For other relief

Petitioner, Edward R. Coss, Pro Se moves This Honorable court upon the Facts And evidence Set Forth, For AN order Denying Respondents motion For Dismissal AND Extension of Time in which Respondents AND Answer should be filed. IN Support of motion petitioner INforms THE Court AS FOllOWS

1. DESPITE THE FACT:

(A) Petitioner is AND has proven his INNOCENSE TO Simple ASSAULT Conviction STATE COURT 86 CR 645 DIST. ATTY Refuses to ACCEPT the FACT that George Frietto on April 2oy 1998 Testified It was he NOT petitioner who ASSAULTED police officer

The AMAZING Thing Here IS The FACT DISTRICT ATTORNEY Believes its Alright For THE State to claim PREJUDICE when A DEFENDANT files HABEAS petition after years But its Alright when The State puts A CASE on The BACK burner For Almost 2 decades ATTEMPTING to AVOID Review

Nothing will ever Change The FACT that The real ASSAILANT testified 14 years later admitting to the crime petitioner DID the TIME For. The time CAN never be Returned, but petitioner should not Have to live with this UNCONSTITUTIONALLY OBTAINED CONVICTION on His permanent Record. Timeliness HAS absolutely nothing to do with A collateral attack especially when newly obtained, Compelling evidence Proves petitioners INNOCENSE.

The state wants it both ways. It's like a "light switch" or an on and off button to an appliance. Com v. Ahlborn 548 PA 544 1997. Is state case law you can't decide in one case it applies and for others you pretend it doesn't exist. This Dist. Atty is guilty of doing just that in the matter of

Com v. Ted Schmidt a Scranton police officer who was decided guilty by a Lacka. Co. Judge. Schmidt a Scranton police officer beat his female wife-girlfriend. He accepted responsibility, and he is guilty. No appeal was taken. Schmidt's sentence expired. He clearly had no appeal pending. Years later when the U.S. Supreme Court changed the law regarding the ownership of guns by persons convicted of Domestic Violence

MR O'MALley AND the LACKAWANNA Co DIST. ATTY. office Decided to turn a FF "Ahlborn" AND Allowed the SAME STATE COURT Judge to grant Relief to schmidt to Rid him of the collateral consequence ADVERSELY affecting him in that he could NOT possess a firearm, SO how could he be a police officer. This Judge NOT only had "NO JURISDICTION to entertain or GRANT Relief because no appeal or motion was timely filed prior to sentence being completed. In FACT MR. schmidt IS NOT and was NOT innocent of the crime the DIST ATTY AND Judge decided to ignore Com V. Ahlborn AND GRANT Relief to A Violent offender after SAID Sentence was complete

why couldnt petitioner reasonably expect the same treatment? especially in light of the fact the same DIST. ATTY. mr O'malley who represented the Commonwealth during the Federal evidentiary Hearing listened to the real assailant Testify and admit to the ASSAULT on a police officer why DIDNT the "Ahlborn" switch get turned to the OFF position? Kind of makes no Sense on how to deny a person relief the state cries "Ahlborn" But in certain cases where favoritism is Extended mr Omalley has a case of "temporary AMNESIA".

whats Good for one is good for All. petitioner believed that because his innocence was so clear that He would See if the state would GRANT Relief

When it became apparent no such relief would be offered petitioner simply requested for his may 17, 2001 Habeas petition to be reopened. The state ruled that no relief can be granted after sentence expires. what mr o'malley fails to realize is the fact petitioner's claims of Gideon violations, actual innocence and Due process violations of Elements regarding the mischief and vandalism charges were not proven during trial were never argued in any previous petition.

(B) Dist. Atty o'malley claims to be concerned about "Judicial Resources" this is not the case and he knows it. The fact is

if Mr O'Malley was truly concerned about Judicial Resources he would be equally concerned for the fact he and his office "twice" convicted an innocent person. These cases 86 CR 645 and 89 CR 1371 will never go away until petitioner receives a fair and full review and that review can only come from the Federal courts. whats so hard for MR O'Malley to understand? Petitioner is innocent. 86 CR 645 Sentence s Served but the case adversly affects petition and forever will. 89 CR 1371 will expire on 3-14-05 This matter is before the court as well.

picture this. O'Malley as being

A small child who is use to Getting his way "Spoiled Brat"

He is Stomping his feet Pouting" AT NOT only Petitioner BUT the Federal Court AS well.

"Eddie Coss ISNT Allowing for us to continue Railroading him he ISNT accepting Responsibility for Crimes He didnt commit, AND that Federal Court they Are spoiling WHAT Ahlborn WAS suppose to be. Ahlborn was Suppose to forever close a matter its WHAT IS called FINALity for the poor But the rich and connected like TED schmidt they can have the door opened AT any time."

CAN you Imagine MR O'malley IS angry AT petitioner because he will NOT "Lay Down" or play Dead and he IS Angry AT the Federal Court AND our U.S. Supreme Court for recognizing Innocence

Judicial Resources, has Nothing to do with Mr. omalley's Concern if it did then he would be fighting to allow in State court exceptions to Ahlborn if a person CAN demonstrate by Compelling evidence he is INNOCENT Instead MR Omalley wants to tell the Federal courts "you can't do that" AND play both sides. MR Omalley MUST realize that with petitioners ACTUAL INNOCENCE claims nothing he CAN say or do will prevent A Full AND FAIR Federal Review If Timeliness had Something to do with raising or the filing of petitioners HABEAS CORPUS then what Judicial Resources would be saved by simply withdrawing said petition and refiling ANother one Raising only the Actual INNOCENSE AND Gideon Violations

Nothing changes the fact Ahlborn prevents the state from reviewing or granting Relief I guess mr. o'malley would feel Better if the State courts were the last Resort In fact too Bad that state Courts would not Listen to and decide more federal violations and perhaps Resources can be saved. Its apparent what mr o'malley's argument is and there is nothing Legal about it.

C) Everytime the state tries to stall or is Running out the clock they Always claim "we never Received it" wow, its almost Humorous. the clerk for the United states Dist Court has been mailing orders to the Dist Atty. office of Lacka Co. probably Longer than Anyone can Remember

And all of a sudden they mailed it to the wrong address amazing! mr o'malley claims he was left out of the loop since the may 17, 2001 filing of the writ by petitioner, and noted 30 docket entries I wonder if mr o'malley realizes its probably because the writ was "administratively closed" and that no order to leave was ever issued until after the reopening? whenever a record, document favors the dist. atty. they always receive it or find it but when its adverse they dont know what your talking about. In this case the dist atty. decided to claim they didnt know about the case pending until nov 16, 2004. But yet admit to having knowledge of an amended petition filed sometime in ~~may~~ sept 2004

Even more Amazing B(2) Mr O'malley claims that USDC clerk mailed the Oct 13, 2004 order to Lacka Co. clerk Receipted oct 15, 2004 by a person "whose Identity has not as yet been determined" please for the Love of God Can Someone explain to Mr O'malley that there are only a handful of clerks that work in the clerks office. If he can't walk in the door and ask a Simple question "who received this order"? then maybe He should ask a Detective from his office to investigate the matter TALKing about High mass! This reminds me of when the court Stenographer lost petitioners entire court TRANSCRIPT AND Tapes. She said an UNKNOWN Fire MARSHALL came into the COURTHOUSE AND Ruled JUST petitioners Little Box with Tapes and disc FROM trial A Fire HAZZARD

until today 14 years later they dont know who the fire marshall was. maybe he was a fire marshall from chicago? the bottom line is mr o'malley will tell this court any story hoping it results in any favorable decision.

D) petitioner will bet his life that in his original Habeas Corpus filing on may 27, 2001 that he mentions his first habeas corpus or the facts regarding the federal evidentiary Hearing held on April 20, 1998 and Review by Both the 3rd circuit and U.S. Supreme court. mr o'malley has Acused petitioner of not Being candid or forthcoming. He is Ridiculous And his accusations are nonsense

It simply defies logic that petitioner would not want the court to know about the first Habeas corpus petitioner was in fact filing the 2nd Habeas corpus to raise issues of actual Innocense and Gideon Violations that weren't Raised or Argued in the first one. In fact Mr Omalley admits that 4 pages are missing How can you accuse someone of Intentional acts but yet admit that 4 pages are missing from the copy your reviewing but first not Get the other 4 pages before Accusation is made?

Dist. Atty admits also that petitioner did state at # 11 he did have other state or Federal filings in this matter

But I guess once again petitioner wasnt "plain" enough in his response mr omalley has a very difficult time comprehending information and if it isnt to his liking he accuses the person of lying. my advice to mr omalley is this Stop accusing petitioner or anyone of lying before you know all the facts and receive the 4 pages you claim you didnt Receive. Also Its not mr omalley's Interpretation of responses that matter its The court and if mr omalley Had it his way there would Be Appellate process at all

(E) with the Benefit of hindsight the suggestion can be ADVANCED that mr. O'malley' ADMITTANCE that petitioner DID IN FACT ANSWER "yes" to #11 that other state or federal filings occurred in this matter AND also that 4 pages were NOT Received by him making his review of Habeas petition NOT complete is AN Intentional ACT AND would seem to skirt the Borders of contempt. mr O'malley claims that petitioner is "Judge shopping"

I wonder IF he realizes that

When you accuse Someone of "Judge shopping" its disrespect not only petitioner but also to the Honorable William Caldwell. If petitioner wasn't assigned a Judge and was in fact "Judge shopping" then whatever Judgeshopping mean is fine, but mr o'malley overstepped the Boundary when He Knew Judge Caldwell has been assigned this case for nearly 3 1/2 years. Just Because mr. o'malley doesn't like a certain Ruling he accuses petitioner of Judge shopping Remember to accuse petitioner of "Judge Shopping" your also accusing a Judge of being "on Sale" and I in fact Do not Know Judge Caldwell and Have never met him

THE Honorable William Caldwell IS A learned MAN. He has been Appointed to the Federal Bench because of his willingness to decide cases based on A strict Interpretation of our constitution AND will not Be swayed by opinion or FRIVILOUS Arguements. "Judge shopping" IS A poor choice of word. Word ? Choice IN FACT its not Judgeshopping its called "Court shopping" AND its evident Based on the Volume of CASES being filed By PA. State prisoners Seeking federal relief that PA IS only Interested in Convictions, State appellate Courts dont review or remedy federal VIOLATIONS So its not A particular Judge its A particular court

AND THAT IS OUR FEDERAL COURT SYSTEM WHICH IS GOVERNED BY OUR CONSTITUTION OF THE UNITED STATES OF AMERICA.

PENNSYLVANIA HAS A CONSTITUTION WHICH APPARENTLY MEANS LITTLE CAN YOU BLAME PETITIONER FOR MAKING A COMPARISON? THE JUSTICE RECEIVED IN STATE COURT IS ZERO. THE FEDERAL COURTS AT LEAST MAKE THE REVIEW.

(F). MR O'MALLEY CLAIMS THAT PETITIONER FAILED TO REQUEST CERTIFICATION FROM COURT OF APPEALS FOR THE FILING OF SECOND OR SUCCESSIVE APPLICATION FOR WRIT OF HABEAS CORPUS. HE ADMITS THAT ON AUGUST 11, 2004 PETITIONER FILED PETITION TO STAY PROCEEDINGS

WHAT MR. OMALLEY FORGOT TO MENTION IS THAT THE MOTION TO STAY PROCEEDINGS WAS FOR THE SOLE PURPOSE OF PETITIONER TO SEEK PERMISSION TO FILE A SECOND OR SUCCESSIVE PETITION BY REQUESTING CERTIFICATION FROM THE CIRCUIT COURT. IN FACT PETITIONER WAS TOLD BY JUDGE BLEWITT THAT IT WASN'T A SECOND OR SUCCESSIVE PETITION. PETITIONER KNEW THAT HIS ACTUAL INNOCENCE, GIDEON AND OTHER DUE PROCESS CLAIMS WERE FIRST TIME CLAIMS, AND MR OMALLEY ADMITS THAT MUST HAVE THE OPPORTUNITY TO DEMONSTRATE CLAIMS HE PRESENTLY SEEKS TO PRESENT WERE NOT PRESENTED IN HIS PRIOR APPLICATION

See 28 USC. 2244 (b)(2)

A Simple comparison of Both 94-1481 And the Instant petition would have Shown MR OMALley that Actual Innocense, Gideon And due process claims Involving elements were not presented in the prior application and the same Judicial Resources he claims to want to Save could have been Saved

(6.) MR OMALley has a habit of Stating what petitioners intensions may have been. For instance that petitioner filed a Response in the wrong court. In response to An Application that the DIST. ATTY. filed IN State court involving 89 CR1371

This is impossible for numerous reasons.

first, Mr. O'Malley knows that there was no activity on 89 CR 1371 from 1997 to 2004. So why would he file an application in a matter that he claims on May 24, 2004.

"the commonwealth is not ready I just received this file."

Now what is it did Mr O'Malley know of the 89 CR 1371 PCRA in 2001 or did he just lie to state Judge by saying he just received the file today. You would have to know of something before you file an application petitioner has no other case or appeal in state court Mr O'Malley should have to produce a docket

proving he filed a the commonwealth
An application that petitioner responded to
in the wrong court. He says things that
aren't true because he knows he has
never been asked to produce proof.

Wherefore Petitioner has demonstrated that
his actual Innocence, and Gideon violations
Issue were not presented in previous application
petitioner did in fact seek certification from
3rd circuit for permission to file successive
petition, but if issues are for the first
time presented does that make the instant
Habeas petition petitions first or second?
Timeliness should not be considered, especially
In light of the fact petitioner has demonstrate
Compelling evidence of his innocence when the
actual assailant testified at evidentiary
Hearing he did assault not petitioner
You can't get any more compelling than
that

Petitioner Immediately filed his petition within 30 days of the Supreme Court Ruling petitioner claims he is actually Innocent for the crime of simple Assault just Because the State of Pennsylvania does not give Relief After maximum term expires does that mean petitioner is forever stuck with A conviction obtained in violation of his constitutional Rights. The State of PA is playing A Game 2 For 1 Or In Fact As many times As we can get Away with it.

Meaning until this unconstitutionally obtained conviction is Removed from petitioners record the State, or employer, or the public will use it Adversely Affecting petitioner

It makes perfect sense for the STATE to challenge a conviction they know is illegal- why not because they will use it again knowing that they can keep running the clock out on a petitioners sentence prior to federal review It would be a cruel dream

over and over the state will use a conviction they know is illegal but refuse to remedy because the sentence expires. why can the state not recognize collateral attacks after expiration of sentence but yet attempt to tell federal courts what to do. MR. omalley isn't worried about considerable Judicial Resources being expended if he was then this case would not Have been placed on a shelf for 18 years.

Mr O'Malley is Concerned about . . .

Judicial favors being extended. Mr O'Malley In fact Hit a "dead end" He Lied to courts twisted facts, called petitioner names and attempted to paint a picture that petitioner is a violent career criminal. Now that the smoke has cleared and all the facts are in Mr O'Malley is "Begging" for a decision. Everyone can see that petitioner is innocent. How can a person admit to a crime exonerating petitioner But yet the State and Mr. O'Malley refuse to assist petitioner in removing Simple Assault conviction from record By claiming "Ahlborn" but when petitioner goes to a court who can help Mr. O'Malley still Argues against Review of claims Because he knows only one conclusion can be reached. petitioner is innocent of the crime of Simple Assault

MR. OMALLEY KNOWS THAT THE FEDERAL EVIDENTIARY HEARING TRANSCRIPT IS NOT IN HIS POSSESSION SO IT CAN NOT DISAPPEAR ANYONE CAN SEE THAT MR O'MALLEY IS WRONG AND HE KNOWS PETITIONER IS INNICENT LOOK AT HIS ARGUEMENT. ITS ONE THAT WILL PREVENT A REVIEW. IF MR O'MALLEY HAD NOTHING TO FEAR HE WOULD WELCOME A REVIEW SO THIS CASE CAN BE DECIDED ONCE AND FOR ALL. MR. OMALLEY SAYS THAT THE STATE WILL COMPLY AND ANSWER THE PETITION. MR O'MALLEY DOES AS HE PLEASES. HE WAS ORDERED TO ANSWER PETITION INSTEAD HE MADE ~~ONE~~ LAST ATTEMPT TO BE LITTLE PETITIONER AND FILE A MOTION TO DISMISS. PETITIONER RESPECTFULLY REQUESTS THAT RESPONDENT'S MOTION BE DENIED IN ITS ENTIRETY.

RESPECTFULLY SUBMITTED

27.

Certificate of Service

I hereby Certify that on December 2, 2004 I served a copy of Petitioners Response To Respondents motion to dismiss upon Respondent Atty William O'malley by U.S. mail Pre paid first class addressed to him as follows.

ADA William O'malley
Lacka Co. Dist atty office
200 N. Washington Ave
Scranton, PA 18503

12/02/04

Dear clerk,

Enclosed please find my ~~as~~ Response to respondents motion to dismiss. Kindly time stamp and return a copy for my files.

Sincerely,